

Department of Health and Human Services

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§ 32.10 Refunds.

(a) If the hearing official, pursuant to a hearing under this part, determines that a debt is not legally due and owing to the United States, the Secretary shall promptly refund any amount collected by means of administrative wage garnishment.

(b) Unless required by Federal law or contract, refunds under this part shall not bear interest.

§ 32.11 Ending garnishment.

(a) Once the Department has fully recovered the amounts owed by the debtor, including interest, penalties, and administrative costs assessed pursuant to and in accordance with part 30 of this title, the Secretary shall send the debtor's employer notification to discontinue wage withholding.

(b) At least annually, the Secretary shall review its debtors' accounts to ensure that garnishment has been terminated for accounts that have been paid in full.

§ 32.12 Right of action.

(a) The employer of a debtor subject to wage withholding pursuant to this part shall pay to the Department as directed in a withholding order issued under this part.

(b) The Secretary may bring suit against an employer for any amount that the employer fails to withhold from wages owed and payable to a debtor in accordance with §§ 32.6 and 32.8, plus attorney's fees, costs, and, if applicable, punitive damages.

(c) A suit under this section may not be filed before the termination of the collection action involving a particular debtor, unless earlier filing is necessary to avoid expiration of any applicable statute of limitations period. For purposes of this section, "termination of collection action" occurs when the Secretary has terminated collection action in accordance with part 30 of this title, or other applicable law or regulation.

(d) Notwithstanding deemed to occur if from a debtor whose paragraph (c) of this section, termination of the collection action will be a period of one (1) year the Department does not receive any payments wages were subject to a

garnishment order issued under this part.

PART 33—SALARY OFFSET

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AUTHORITY: 5 U.S.C. 5514; 5 CFR Part 550, Subpart K.

SOURCE: 72 FR 10421, Mar. 8, 2007, unless otherwise noted.

§ 33.1 Purpose, authority, and scope.

(a) *Purpose.* This part prescribes the Department's standards and procedures for the collection of debts owed by Federal employees to the United States through involuntary salary offset.

(b) *Authority.* 5 U.S.C. 5514; 5 CFR Part 550, subpart K.

(c) *Scope.* (1) This part applies to internal and Government-wide collections of debts owed by Federal employees by administrative offset from the current pay account of the debtor without his or her consent.

(2) The procedures contained in this part do not apply to any case where an employee consents to collection through deduction(s) from the employee's pay account, or to debts arising under the Internal Revenue Code or the tariff laws of the United States, or where another statute explicitly provides for, or prohibits, collection of a debt by salary offset (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

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(3) This part does not preclude an employee from requesting waiver of an erroneous payment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or in any way questioning the amount or validity of a debt, in the manner prescribed by the Secretary. Similarly, this part does not preclude an employee from requesting waiver of the collection of a debt under any other applicable statutory authority.

(4) Nothing in this part precludes the compromise of the debt, or the suspension or termination of collection actions, in accordance with part 30 of this title.

§ 33.2 Definitions.

In this part—

Administrative offset means withholding funds payable by the United States to, or held by the United States for, a person to satisfy a debt owed by the payee.

Agency means an executive department or agency; a military department; the United States Postal Service; the Postal Rate Commission; the United States Senate; the United States House of Representatives; and court, court administrative office, or instrumentality in the judicial or legislative branches of the Government; or a Government Corporation.

Creditor agency means the agency to which the debt is owed, including a debt collection center when acting on behalf of a creditor agency in matters pertaining to the collection of a debt.

Day means calendar day. For purposes of computation, the last day of the period will be included unless it is a Saturday, Sunday, or a Federal holiday, in which case the next business day will be considered the last day of the period.

Debt means an amount determined by an appropriate official to be owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

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Debt collection center means the Department of the Treasury or other Government agency or division designated by the Secretary of the Treasury with authority to collect debts on behalf of creditor agencies in accordance with 31 U.S.C. 3711(g).

Debtor means a Federal employee who owes a debt to the United States.

Delinquent debt means a debt which the debtor does not pay or otherwise resolve by the date specified in the initial demand for payment, or in an applicable written repayment agreement or other instrument, including a post-delinquency repayment agreement.

Department means the Department of Health and Human Services, its Staff Divisions, Operating Divisions, and Regional Offices.

Disposable pay means that part of the debtor's current basic, special, incentive, retired, and retainer pay, or other authorized pay, remaining after deduction of amounts required by law to be withheld. For purposes of calculating disposable pay, legally required deductions that must be applied first include: Tax levies pursuant to the Internal Revenue Code (title 26, United States Code); properly withheld taxes, FICA, Medicare; health and life insurance premiums; and retirement contributions. Amounts deducted under garnishment orders, including child support garnishment orders, are not legally required deductions for calculating disposable pay.

Employee means any individual currently employed by an agency, as defined in this section, including seasonal and temporary employees and current members of the Armed Forces or a Reserve of the Armed Forces (Reserves).

Evidence of service means information retained by the Department indicating the nature of the document to which it pertains, the date of mailing the document, and the address and name of the debtor to whom it is being sent. A copy of the dated and signed written notice of intent to offset provided to the debtor pursuant to this part may be considered evidence of service for purposes of this part. Evidence of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

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Hearing means a review of the documentary evidence to confirm the existence or amount of a debt or the terms of a repayment schedule. If the Secretary determines that the issues in dispute cannot be resolved by such a review, such as when the validity of the claim turns on the issue of credibility or veracity, the Secretary may provide an oral hearing.

Hearing official means a Departmental Appeals Board administrative law judge or appropriate alternate as outlined in § 33.7(a)(2).

Paying agency means the agency employing the individual and authorizing the payment of his or her current pay.

Salary offset means an administrative offset to collect a debt under 5 U.S.C. 5514 owed by a federal employee through deductions at one or more officially established pay intervals from the current pay account of the employee without his or her consent.

Secretary means the Secretary of Health and Human Services, or the Secretary's designee within any Staff Division, Operating Division or Regional Office.

Waiver means the cancellation, remission, forgiveness, or non-recovery of a debt owed by an employee to this Department or another agency as required or permitted by 5 U.S.C. 5584, 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or any other law.

§ 33.3 General rule.

(a) Whenever a delinquent debt is owed to the Department by an employee, the Secretary may, subject to paragraphs (b) through (d) of this section, involuntarily offset the amount of the debt from the employee's disposable pay.

(b) Unless provided by another statute pertaining to a particular type of debt (e.g., 42 U.S.C. 292r, Health professionals education, 42 U.S.C. 297b, Nurse education), the Department may not initiate salary offset to collect a debt more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were

charged with the responsibility to discover and collect such debts.

(c) Except as provided in paragraph (d) of this section, prior to initiating collection through salary offset under this part, the Secretary must first provide the employee with the following:

(1) Written notice of intent to offset as described in § 33.4; and

(2) An opportunity to petition for a hearing, and, if a hearing is provided, to receive a written decision from the hearing official within 60 days on the following issues:

(i) The determination of the Department concerning the existence or amount of the debt; and

(ii) The repayment schedule, unless it was established by written agreement between the employee and Department.

(d) The provisions of paragraph (c) of this section do not apply to:

(1) Any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a federal benefits program requiring periodic deduction from pay, if the amount to be recovered was accumulated over four pay periods or less;

(2) A routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the four pay periods preceding the adjustment and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for contesting such adjustment; or

(3) Any adjustment to collect a debt amounting to \$50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

§ 33.4 Notice requirements before offset.

(a) At least 30 days before the initiation of salary offset under this part, the Secretary shall mail, by first class mail, to the employee's last known address, a written notice informing the debtor of the following:

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(1) The Secretary has reviewed the records relating to the debt and has determined that a debt is owed, the amount of the debt, and the facts giving rise to the debt;

(2) The Secretary's intention to collect the debt by means of deduction from the employee's current disposable pay account until the debt and all accumulated interest, penalties, and administrative costs are paid in full;

(3) The amount, stated either as a fixed dollar amount or as a percentage of pay not to exceed 15 percent of disposable pay, the frequency, the commencement date, and the duration of the intended deductions;

(4) An explanation of the Department's policies concerning the assessment of interest, penalties, and administrative costs, stating that such assessments must be made unless waived in accordance with 31 CFR 901.9 and § 30.18 of this title;

(5) The employee's right to inspect and copy all records of the Department pertaining to the debt or, if the employee or the employee's representative cannot personally inspect the records, to request and receive copies of such records;

(6) If not previously provided, the opportunity to establish a schedule for the voluntary repayment of the debt through offset, or to enter into an agreement to establish a schedule for repayment of the debt in lieu of offset, provided the agreement is in writing, signed by both the employee and the Department, and documented in the Department's files;

(7) The right to a hearing conducted by an impartial hearing official with respect to the existence and amount of the debt, or the repayment schedule, so long as a petition is filed by the employee as prescribed in § 33.6;

(8) Time limitations and other procedures or conditions for inspecting Department records pertaining to the debt, establishing an alternative repayment agreement, and requesting a hearing;

(9) The name, address, and telephone number of the person or office within the Department who may be contacted concerning the procedures for inspecting Department records, establishing

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an alternative repayment agreement, and requesting a hearing;

(10) The name and address of the office within the Department to which the petition for a hearing should be sent, which generally will be the Operating Division or Staff Division responsible for collecting the debt;

(11) A timely and properly filed petition for a hearing will stay the commencement of the collection proceeding;

(12) The Department will initiate action to effect salary offset not less than 30 days from the date of mailing the notice of intent, unless the employee properly files a timely petition for a hearing;

(13) A final decision on a hearing, if one is requested, will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceeding;

(14) Knowingly false or frivolous statements, representations or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under chapter 75 of title 5, United States Code; part 752 of title 5, Code of Federal Regulations; or any other applicable statutes or regulations;

(ii) Penalties under the False Claims Act, 31 U.S.C. 3729–3731, or under any other applicable statutory authority; and

(iii) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002, or under any other applicable statutory authority;

(15) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(16) Unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt, which are later waived or found not owed to the United States, will be promptly refunded to the employee; and

(17) Proceedings with respect to such debt are governed by 5 U.S.C. 5514.

(b) The Secretary will retain evidence of service indicating the date of mailing of the notice.

§ 33.5 Review of department records relating to the debt.

(a) To inspect or copy Department records relating to the debt, the employee must send a written request to the Department official or office designated in the notice of intent to offset stating his or her intention. The written request must be received by the Department within 15 days from the employee's receipt of the notice.

(b) In response to a timely request as described in paragraph (a) of this section, the designated Department official shall notify the employee of the location and time when the employee may inspect and copy such records. If the employee or employee's representative is unable to personally inspect such records as the result of geographical or other constraints, the Department shall arrange to send copies of such records to the employee.

§ 33.6 Hearings.

(a) *Petitions for hearing.* (1) To request a hearing concerning the existence or amount of the debt or the offset schedule established by the Department, the employee must send a written petition to the office designated in the notice of intent to offset, see § 33.4(a)(10), within 15 days of receipt of the notice.

(2) The petition must:

- (i) Be signed by the employee;
- (ii) Fully identify and explain with reasonable specificity all the facts, evidence, and witnesses, if any, that the employee believes support his or her position; and
- (iii) Specify whether an oral or paper hearing is requested. If an oral hearing is requested, the request should explain why the matter cannot be resolved by review of the documentary evidence alone.

(3) The timely filing of a petition for hearing shall stay any further collection proceedings.

(b) *Failure to timely request.* (1) If the petition for hearing is filed after the 15-day period provided for in paragraph (a)(1) of this section, the Secretary may grant the request if the employee can establish that the delay was the result of circumstances beyond the employee's control, or that the employee failed to receive actual notice of the filing deadline.

(2) An employee waives the right to a hearing, and will have his or her disposable pay offset in accordance with the offset schedule established by the Department, if the employee:

(i) Fails to file a timely request for a hearing, unless such failure is excused; or

(ii) Fails to appear at an oral hearing, of which the employee was notified, unless the hearing official determines that the failure to appear was due to circumstances beyond the employee's control.

(c) *Form of hearings.* (1) General. After the employee requests a hearing, the hearing official shall notify the employee of the form of the hearing to be provided. If the hearing will be oral, the notice shall set forth the date, time, and location of the hearing. If the hearing will be a review of the written record, the employee shall be notified that he or she should submit evidence and arguments in writing to the hearing official by a specified date, after which the record shall be closed. The date specified shall give the employee reasonable time to submit documentation.

(2) *Oral hearing.* An employee who requests an oral hearing shall be provided an oral hearing if the hearing official determines that the matter cannot be resolved by review of documentary evidence alone because an issue of credibility or veracity is involved. Where an oral hearing is appropriate, the hearing is not an adversarial adjudication and need not take the form of an evidentiary hearing, i.e., the rules of evidence need not apply. *Oral hearings may take the form of, but are not limited to:*

(i) Informal conferences with the hearing official in which the employee and agency representative will be given full opportunity to present evidence, witnesses, and arguments;

(ii) Informal meetings in which the hearing official interviews the employee; or

(iii) Formal written submissions with an opportunity for oral presentations.

(3) *Paper hearing.* If the hearing official determines that an oral hearing is not necessary, the hearing official will make the determination based upon a review of the available written record.

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(4) *Record.* The hearing official shall maintain a summary record of any hearing conducted under this part. Witnesses who testify in oral hearings will do so under oath or affirmation.

(d) *Written decision.* (1) Date of decision. The hearing officer shall issue a written opinion stating his or her decision, based upon documentary evidence and information developed at the hearing, as soon as practicable after the hearing, but not later than sixty (60) days after the date on which the hearing petition was received by the creditor agency, unless the employee requested a delay in the proceedings, in which case the 60-day decision period shall be extended by the number of days by which the hearing was postponed. The recipient of an employee's request for a hearing must forward the request expeditiously to the Departmental Appeals Board so as to not jeopardize the Board's ability to issue a decision within this 60-day period.

(2) *Content of decision.* The written decision shall include:

(i) A statement of the facts presented to support the origin, nature, and amount of the debt;

(ii) The hearing official's findings, analysis, and conclusions, including a determination whether the employee's petition for hearing was baseless and resulted from an intent to delay creditor agency collection activity; and

(iii) The terms of any repayment schedule, if applicable.

(e) *Failure to appear.* In the absence of good cause shown, an employee who fails to appear at a hearing shall be deemed, for the purpose of this part, to admit the existence and amount of the debt as described in the notice of intent. If the representative of the creditor agency fails to appear, the hearing official shall proceed with the hearing as scheduled and make a determination based upon oral testimony presented and the documentary evidence submitted by both parties. With the agreement of both parties, the hearing official shall schedule a new hearing date, and both parties shall be given reasonable notice of the time and place of the new hearing.

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§ 33.7 Obtaining the services of a hearing official.

(a)(1) When the Department is the creditor agency, the office designated in § 33.4(a)(10) shall schedule a hearing, if one is requested by an employee, before a hearing official.

(2) When the Department cannot provide a prompt and appropriate hearing before an administrative law judge or a hearing official furnished pursuant to another lawful arrangement, the office designated in § 33.4(a)(10) may:

(i) When the debtor is not an employee of the Department, contact an agent of the employee's paying agency designated in 5 CFR part 581, Appendix A, to arrange for a hearing official; or

(ii) When the debtor is an employee of the Department, contact an agent of any agency designated in 5 CFR part 581, Appendix A, to arrange for a hearing official.

(b)(1) When another agency is the creditor agency, it is the responsibility of that agency to arrange for a hearing if one is requested. The Department will provide a hearing official upon the request of a creditor agency when the debtor is employed by the Department and the creditor agency cannot provide a prompt and appropriate hearing before a hearing official furnished pursuant to another lawful arrangement.

(2) Services rendered to a creditor agency under paragraph (b)(1) of this section will be provided on a fully reimbursable basis pursuant to the Economy Act of 1932, as amended, 31 U.S.C. 1535.

(c) The determination of a hearing official designated under this section is considered to be an official certification regarding the existence and amount of the debt for purposes of executing salary offset under 5 U.S.C. 5514 and this part. A creditor agency may make a certification to the Secretary of the Treasury under 5 CFR 550.1108 or a paying agency under 5 CFR 550.1109 regarding the existence and amount of the debt based on the certification of a hearing official. If a hearing official determines that a debt may not be collected via salary offset, but the creditor agency finds that the debt is still valid, the creditor agency may still seek collection of the debt through

other means, such as offset of other Federal payments or litigation.

§ 33.8 Voluntary repayment agreement in lieu of salary offset.

(a)(1) In response to the notice of intent to offset, the employee may propose to establish an alternative schedule for the voluntary repayment of the debt by submitting a written request to the Department official designated in the notice of intent to offset. An employee who wishes to repay the debt without salary offset shall also submit a proposed written repayment agreement. The proposal shall admit the existence of the debt, and the agreement must be in such form that it is legally enforceable. The agreement must:

- (i) Be in writing;
- (ii) Be signed by both the employee and the Department;
- (iii) Specify all the terms of the arrangement for payment; and
- (iv) Contain a provision accelerating the debt in the event of default by the employee, but such an increase may not result in a deduction that exceeds 15 percent of the employee's disposable pay unless the employee has agreed in writing to deduction of a greater amount.

(2) Any proposal under paragraph (a)(1) of this section must be received by the Department within 30 days of the date of the notice of intent to offset.

(b) In response to a timely request as described in paragraph (a) of this section, the designated Department official shall notify the employee whether the proposed repayment schedule is acceptable. It is within the Secretary's discretion to accept a proposed alternative repayment schedule, and to set the necessary terms of a voluntary repayment agreement.

(c) No voluntary repayment agreement will be binding on the Secretary unless it is in writing and signed by both the Secretary and the employee.

§ 33.9 Special review.

(a) A Department employee subject to salary offset or a voluntary repayment agreement may, at any time, request a special review by the Secretary of the amount of the salary offset or voluntary repayment installments,

based on materially changed circumstances, such as, but not limited to, catastrophic illness, divorce, death, or disability.

(b)(1) In determining whether an offset would prevent the employee from meeting essential subsistence expenses, e.g., food, housing, clothing, transportation, and medical care, the employee shall submit a detailed statement and supporting documents for the employee, his or her spouse, and dependents indicating:

- (i) Income from all sources;
- (ii) Assets and liabilities;
- (iii) Number of dependents;
- (iv) Food, housing, clothing, transportation, and medical expenses; and
- (v) Exceptional and unusual expenses, if any.

(2) When requesting a special review under this section, the employee shall file an alternative proposed offset or payment schedule and a statement, with supporting documents as described in paragraph (b)(1) of this section, stating why the current salary offset or payments result in an extreme financial hardship to the employee.

(c)(1) The Secretary shall evaluate the statement and supporting documents, and determine whether the original offset or repayment schedule imposes extreme financial hardship on the employee.

(2) Within 30 calendar days of the receipt of the request and supporting documents, the Secretary shall notify the employee in writing of such determination, including, if appropriate, a revised offset or repayment schedule.

(d) If the special review results in a revised offset or repayment schedule, the Secretary shall provide a new certification to the paying agency.

§ 33.10 Procedures for salary offset.

(a) *Method and source of deductions.* Unless the employee and the Secretary have agreed to an alternative repayment arrangement under § 33.8, a debt shall be collected in lump sum or by installment deductions at officially established pay intervals from an employee's current pay account.

(b) *Limitation on amount of deduction.* Ordinarily, the size of installment deductions must bear a reasonable relationship to the size of the debt and the

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employee's ability to pay. However, the amount deducted for any pay period must not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount, as outlined in § 33.8.

(c) *Duration of deductions.* (1) Lump sum. If the amount of the debt is equal to or less than 15 percent of the employee's disposable pay for an officially established pay interval, the debt generally will be collected in one lump-sum deduction.

(2) If the employee is deemed financially unable to pay in one lump-sum or the amount of the debt exceeds 15 percent of the employee's disposable pay for an officially established pay interval, the debt shall be collected in installments. Except as provided in paragraphs (e) and (f) of this section, installment deductions must be made over a period not greater than the anticipated period of active duty or employment.

(d) *When deductions may begin.* (1) Deductions will begin on the date stated in the notice of intent, unless an alternative repayment agreement under § 33.8 has been accepted or the employee has filed a timely request for a hearing.

(2) If the employee files a timely petition for hearing as provided in § 33.6, deductions will begin after the hearing official has provided the employee with a hearing and a final written decision has been rendered in favor of the Department.

(e) *Liquidation from final check.* If an employee retires, resigns, or the period of employment ends before collection of the debt is completed, the remainder of the debt will be offset under 31 U.S.C. 3716 from subsequent payments of any nature (e.g., final salary payment or lump-sum leave) due the employee from the paying agency as of the date of separation.

(f) *Recovery from other payments due a separated employee.* If the debt cannot be satisfied by offset from any final payment due the employee on the date of separation, the Secretary will liquidate the debt, where appropriate, by administrative offset under 31 U.S.C. 3716 from later payments of any kind

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due the former employee (e.g., lump sum leave payment).

§ 33.11 Salary offset when the Department is the creditor agency but not the paying agency.

(a) *Centralized administrative offset.* (1) Under 31 U.S.C. 3716, the Department shall notify the Secretary of the Treasury of all past-due, legally enforceable debts which are 180 days delinquent for purposes of collection by centralized administrative offset. This includes debts which the Department seeks to recover from the pay account of an employee of another agency via salary offset. The Secretary of the Treasury and other Federal disbursing officials will match payments, including Federal salary payments, against these debts. Where a match occurs, and all the requirements for offset have been met, the payments will be offset to collect the debt.

(2) Prior to offset of the pay account of an employee, the Department must comply with the requirements of 5 U.S.C. 5514; 5 CFR part 550, subpart K, and this part. Specific procedures for notifying the Secretary of the Treasury of a debt for purposes of collection by administrative offset, including salary offset, are contained in 31 CFR parts 285 and 901 and part 30 of this title.

(b) *Non-centralized administrative offset.* When salary offset through centralized administrative offset under paragraph (a) of this section is not possible, the Department may attempt to collect a debt through non-centralized administrative offset in accordance with part 30 of this title.

(1) *Format of the request.* Upon completion of the procedures established in this part and pursuant to 5 U.S.C. 5514, the Department shall:

(i) Certify in writing to the paying agency that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is due, the date the Government's right to collect the debt first accrued, and that the Departmental regulations implementing 5 U.S.C. 5514 have been approved by the Office of Personnel Management.

(ii) If the collection is to be made in installments, advise the paying agency

of the number of installments to be collected, the amount or percentage of disposable pay to be collected in each installment, and the commencement date of the installments, if a date other than the next officially established pay period is required.

(iii) Unless the employee has consented in writing to the salary deductions or signed a statement acknowledging receipt of the required procedures and this written consent or statement is forwarded to the paying agency, advise the paying agency of the action(s) taken under 5 U.S.C. 5514 and this part, and give the date(s) the action(s) was taken.

(2) *Requesting recovery from current paying agency.* (i) Except as otherwise provided in this paragraph, the Department shall submit a certified debt claim containing the information specified in paragraph (a) of this section, and an installment agreement, or other instruction on the payment schedule, if applicable, to the employee's paying agency.

(ii) If the employee is in the process of separating from the Federal Government, the Department shall submit the certified debt claim to the employee's paying agency for collection as provided in § 33.10(e). The paying agency must certify the total amount of its collection on the debt and send a copy of the certification to the employee and another copy to the Department. If the paying agency's collection does not fully satisfy the debt, and the paying agency is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments that may be due the employee from other Federal Government sources, the paying agency will provide written notification of the outstanding debt to the agency responsible for making such payments to the employee, stating the employee owes a debt, the amount of the debt, and that the provisions of this section have been fully complied with. The Department must submit a properly certified claim to the agency responsible for making such payments before the collection can be made.

(iii) If the employee is already separated and all payments due from the employee's former paying agency have

been paid, the Department may request, unless otherwise prohibited, that money due and payable to the employee from the Civil Service Retirement and Disability Fund (5 CFR 831.1801 or 5 CFR 845.401) or other similar funds, be administratively offset to collect the debt. See 31 U.S.C. 3716 and 31 CFR 901.3.

(iv) If the employee transfers to another paying agency, the Department must submit a properly certified debt claim to the new paying agency before collection can be resumed; however, the Department need not repeat the due process procedures described in 5 U.S.C. 5514 and this part. The Department shall review the debt to ensure that collection is resumed by the new paying agency.

§ 33.12 Salary offset when the Department is the paying agency but not the creditor agency.

(a) *Format of the request.* (1) When the Department is the paying agency and another agency is the creditor agency, the creditor agency must certify, in writing, to the Department that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is due, the date the Government's right to collect the debt first accrued, and that the creditor agency's regulations implementing 5 U.S.C. 5514 have been approved by the Office of Personnel Management.

(2) If the collection is to be made in installments, the creditor agency must also advise the Department of the number of installments to be collected, the amount or percentage of disposable pay to be collected in each installment, and the commencement date of the installments, if a date other than the next officially established pay period is required.

(3) Unless the employee has consented in writing to the salary deductions or signed a statement acknowledging receipt of the required procedures and the written consent or statement is forwarded to the Department, the creditor agency must advise the Department of the action(s) taken under 5 U.S.C. § 5514, and give the date(s) the action(s) was taken.

(b) *Requests for recovery.* (1) Complete claim. When the Department receives a

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properly certified debt claim from a creditor agency, deductions should be scheduled to begin prospectively at the next officially established pay interval. The employee must receive written notice as described in § 33.10 that the Department has received a certified debt claim from the creditor agency, including the amount, and written notice of the date deductions from salary will commence and the amount of such deductions.

(2) *Incomplete claim.* When the Department receives an incomplete debt claim from a creditor agency, the Secretary shall return the debt claim with a notice that procedures under 5 U.S.C. 5514 and 5 CFR part 550, subpart K, must be provided and a properly certified debt claim received before action will be taken to collect from the employee's current pay account.

(c) *Review.* The Secretary is not required or authorized to review the merits of the determination with respect to the amount or validity of the debt certified by the creditor agency.

(d) *Employees separating.* If an employee begins separation action before the Department collects the total debt due the creditor agency, the following actions will be taken:

(1) To the extent possible, the balance owed the creditor agency will be liquidated from a final salary check, or other final payments of any nature due the employee from the Department;

(2) The Secretary will certify the total amount of the Department's collection on the debt and send a copy of the certification to the employee and another copy to the creditor agency; and

(3) If the Department's collection does not fully satisfy the debt, and the Secretary is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments that may be due the employee from other Federal Government sources, the Secretary will provide written notification of the outstanding debt to the agency responsible for making such payments to the employee. The written notification shall state that the employee owes a debt, the amount of the debt, and that the provisions of this section have been fully complied with. The Depart-

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ment shall furnish a copy of this written notification to the creditor agency so that it can file a properly certified debt claim with the agency responsible for making such payments.

(e) *Employees who transfer to another paying agency.* If, after the creditor agency has submitted a debt claim to the Department, the employee transfers from the Department to a different paying agency before the debt is collected in full, the Secretary shall:

(1) Certify the total amount of the collection made on the debt; and

(2) Furnish a copy of the certification to the employee and another copy to the creditor agency along with notice of the employee's transfer.

§ 33.13 Interest, penalties, and administrative costs.

Debts owed to the Department shall be assessed interest, penalties and administrative costs in accordance with 45 CFR 30.18.

§ 33.14 Non-waiver of rights.

An employee's involuntary payment of all or any portion of a debt collected under this part shall not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provision of law or contract, unless there are statutory or contractual provisions to the contrary.

§ 33.15 Refunds.

(a) The Secretary shall promptly refund any amounts paid or deducted under this part when:

(1) A debt is waived or otherwise found not owing to the United States; or

(2) The employee's paying agency is directed by administrative or judicial order to refund amount deducted from the employee's current pay.

(b) Unless required or permitted by law or contract, refunds shall not bear interest.

§ 33.16 Additional administrative collection action.

Nothing contained in this part is intended to preclude the use of any other appropriate administrative remedy.

**PART 34—CLAIMS FILED UNDER THE
MILITARY PERSONNEL AND CIVILIAN
EMPLOYEES ACT**

Sec.

- 34.1 Purpose and scope.
- 34.2 Definitions.
- 34.3 Filing procedures and time limits.
- 34.4 Allowable claims.
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- 34.6 Reconsideration or appeal.
- 34.7 Payment procedures.
- 34.8 Computation of award and settlement.
- 34.9 Claims involving carriers or insurers.

AUTHORITY: 31 U.S.C. 3721.

SOURCE: 69 FR 13257, Mar. 22, 2004, unless otherwise noted.

§ 34.1 Purpose and scope.

(a) *Purpose.* This part prescribes policies and procedures for handling claims not in excess of \$40,000.00 filed by employees against the Department of Health and Human Services under the Military Personnel and Civilian Employees Claims (MPCE) Act of 1964, 31 U.S.C. 3721, for damage to, or loss of, property against the Department. Under the MPCE Act, the Secretary may approve claims made against the Government by a federal government employee for damage to or loss of personal property that is incident to employment when the loss or damage is not due to any negligence on the part of employee.

(b) *Scope.* This part applies to all Departmental Operating Divisions and Regional Offices that process and review claims under the MPCE Act. Nothing in this part shall be construed to bar other types of claims that are payable under other statutory authority such as, but not limited to, the Federal Tort Claims Act (28 U.S.C. 2671–2680).

§ 34.2 Definitions.

In this part, unless the context otherwise requires:

Claim means any claim filed by or on behalf of an employee for damage to, or loss of, property that is incident to the claimant's employment. This definition includes claims where the claimant is not the legal owner of the property in question, but has obtained authorization from the legal owner to possess or control the property.

Claimant means an employee who has filed a claim with the Department under the MPCE Act.

Damage or loss means total or partial destruction or loss of the item claimed.

Department means the Department of Health and Human Services.

Employee means an officer or employee of the Department.

Quarters means a house, apartment or other residence assigned by the government to an employee of the Department.

§ 34.3 Filing procedures and time limits.

(a) *Who may file a claim.* A claim may be filed by the following individuals:

- (1) An employee;
- (2) An authorized agent or representative of an employee or employee's estate, regardless of whether the claim arose before or concurrent with an employee's death; and
- (3) A former employee or his authorized agent or representative if damage or loss occurred prior to the separation from the Department.

(b) *Requirements.* A claim submitted under this part must be presented in writing to the Claims Officer (See paragraph (c) of this section). Claims may be submitted on a HHS-481 form, Employee Claim for Loss or Damage to Personal Property. All claims must be signed by the claimant or his authorized agent or representative. The HHS-Form can be obtained from the Claims Officer or downloaded from the Program Support Center's webpage at www.psc.gov. All claims must include the following:

- (1) Name and address of the claimant;
- (2) The office in which the claimant was employed at the time of loss, current office, if different, and telephone number;
- (3) Date of loss or damage;
- (4) Amount of claim;
- (5) Description of the property, including but not limited to type, design, model number, date acquired, value when acquired, value when lost, and estimation of repair or replacement cost;
- (6) Description of incident; and
- (7) If property was insured when loss or damage occurred, a statement indicating whether a claim was filed with an insurance carrier.